

IMPORTANT NOTICE

DUE PROCESS RIGHTS - JUVENILE PAROLE REVOCATION

L.H. v. Schwarzenegger, E.D. Cal. No. 2:06-CV-02042-LKK-GGH

L.H. v. Schwarzenegger is a statewide class-action lawsuit seeking to change the way California treats persons in the juvenile system who are arrested on parole violations. A settlement has been reached, and the federal court has found that the settlement is fair, adequate and reasonable. The court has entered a Permanent Injunction. This notice explains the settlement and where you can find more information about it.

The *L.H. v. Schwarzenegger* class action was filed in 2006. If you are a California juvenile parolee, you are a member of the *L.H.* class (*i.e.*, the group that is impacted), whether you are out on parole, being held in jail or prison on revocation charges, or serving a revocation term. The lawyers for the parolees are Rosen, Bien & Galvan LLP, Youth Law Center, and Bingham McCutchen LLP.

The individual defendants in this case are: Arnold Schwarzenegger, Governor of the State of California and Chief Executive of the state government; Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation (“CDCR”), Scott Kernan, Undersecretary of Operations, CDCR, Bernard Warner, Chief Deputy Secretary of the Division of Juvenile Justice (“DJJ”), Rachel Rios, Director, Division of Juvenile Parole Operations, Martin Hoshino, Executive Officer of the Board of Parole hearings (“BPH”), Robert Doyle, Chair of the BPH,, Susan Melanson, Henry Aguilar, Askia Abdulmajeed, Joseph Compton, Robert Cameron, Joyce Arredondo, Mary Schamer, and Tracey St. Julien, all of whom are Commissioners or Board Representatives of the JPB, and Chuck Supple, Executive Officer of the Juvenile Parole Board (“JPB”).

The defendants include state officials in charge of the California Department of Corrections and Rehabilitation (“CDCR”), Division of Juvenile Justice (“DJJ”), Board of Parole Hearings (“BPH”), and Juvenile Parole Board (“JPB”).

The *L.H.* lawsuit challenges violations of juvenile parolees’ rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the Rehabilitation Act, and the Americans with Disabilities Act. The lawsuit asked the federal court to order the CDCR, DJJ, BPH, and JPB to change juvenile parole

revocation procedures to comply with the Constitution and the ADA. No money damages were asked for, and none will be awarded in this class action case.

The *L.H.* lawsuit was based on claims that the CDCR, DJJ, BPH, and JPB violated the Constitution and the ADA in the following specific ways:

- The CDCR, DJJ, BPH, and JPB arrest and hold parolees for weeks or months without any hearings to find out whether there is probable cause to hold them.
- The CDCR, DJJ, BPH, and JPB do not tell parolees of their rights or the charges against them before seeking waivers or admissions.
- The CDCR, DJJ, BPH, and JPB do not give parolees enough notice of the charges against them before the revocation or “*Morrissey*” hearing.
- The CDCR, DJJ, BPH, and JPB use forms in parole revocation that are too hard to read.
- The CDCR, DJJ, BPH and JPB do not provide the help that parolees with disabilities and other special communication needs required to understand documents and forms, to understand their rights and the charges against them, to speak on their own behalf, and to understand what is being said and done in the revocation process.
- The CDCR, DJJ, BPH, and JPB do not provide attorneys to represent parolees who should get attorneys under the Due Process Clause. When the CDCR, DJJ, BPH, and JPB do provide attorneys, the attorneys do not get enough time to represent the parolee, and do not get enough information from the CDCR, DJJ, BPH, and JPB.
- The CDCR, DJJ, BPH, and JPB do not provide enough help for parolees with disabilities, mental illness, or other problems that make it hard for them to decide on waivers or admissions or to participate in revocation hearings.
- The CDCR, DJJ, BPH, and JPB sometimes do not allow parolees to present witnesses and evidence needed to defend themselves at revocation hearings.

- The CDCR, DJJ, BPH, and JPB sometimes do not allow parolees to cross-examine persons who provide evidence against them.
- The JPB's system for parole revocation appeals is unfair.

On September 19, 2007, the Court granted Plaintiffs' Motion for Partial Summary Judgment, holding that the State's failure to hold probable cause hearings and its imposition of lengthy revocation hearing delays violated the Constitution. On January 29, 2008, the Court granted in part and denied in part Plaintiff's motion for preliminary injunction, ordering that the CDCR, DJJ, BPH, and JPB begin appointing counsel to represent juvenile parolees at parole revocation proceedings, to provide counsel with access to necessary files sufficiently in advance of the hearing to allow adequate preparation, and to develop sufficiently specific draft policies and procedures to ensure continuous compliance with all of the requirements of the Americans with Disabilities Act. Other issues in the case were not decided. The settlement means that these issues will not go to trial.

On June 4, 2008 the parties and their attorneys entered into a negotiated plan in the form of a "Stipulated Order for Permanent Injunctive Relief" ("Permanent Injunction"), which settled the lawsuit, and requires the CDCR, DJJ, BPH, and JPB to change the juvenile parole revocation procedures to fix the problems listed above. The Court held a fairness hearing on October 6, 2008 and issued an order on October 7, 2008 finding that the settlement was fair, reasonable and adequate. As approved by the Court, the Permanent Injunction requires many changes in the revocation system. Here are some of the most important changes.

- The CDCR, DJJ, BPH, and JPB must give the parolees notice of the charges within 3 business days of the placement of a parole hold.
- All juvenile parolees will receive attorneys in the revocation process. Attorneys will help the parolees decide on any screening offers, and will represent parolees at any hearings.
- Juvenile parolees may request that their public defender or private attorney represent them; however, these types of attorneys may decline the request and the parolee will then be represented by the State's appointed attorney.

- The CDCR, DJJ, BPH, and JPB must provide attorneys with all non-confidential information they intend to use against the parolee. Due process limits what information the CDCR, DJJ, BPH, and JPB can call confidential.
- Juvenile parolees' attorneys will be able to review parolees' field files.
- Attorneys will be provided with training on how to represent juvenile parolees effectively.
- The CDCR, DJJ, BPH, and JPB must provide a probable cause hearing within 13 business days after the juvenile parolee has been placed on a parole hold to find out if there is probable cause to hold the parolee.
- If the attorney can show that there is no basis to continue holding the parolee, the CDCR, DJJ, BPH, and JPB must provide an expedited (faster) probable cause hearing, within ten business days after the parole hold has been placed.
- At the probable cause hearing, juvenile parolees will be allowed to present evidence to defend against the charges, or to show that revocation is not appropriate. The parolee and parolee's attorney will be allowed to present such evidence through the parolee's testimony, or through written documents.
- Final revocation hearings must be held within 50 miles of the alleged violation no later than 35 calendar days after placement of the parole hold.
- Juvenile parolees' attorneys will be able to subpoena and present witnesses, documents, and other evidence for final revocation hearings in the same way that the state can subpoena and present them.
- The CDCR, DJJ, BPH, and JPB will not be permitted to use hearsay evidence against a parolee in a manner that violates the parolee's conditional right to confront his or her accusers.
- Sentencing for a violation of parole will be limited to a determinate (fixed) sentence of no more than one year for juveniles in parole revocation. To extend revocation beyond the revocation term, there will have to be a hearing before the Juvenile Parole Board, at which the parolee will be

represented by an attorney. Temporary Detention, Time Adds, and Parole Consideration Hearings will no longer be available as a means to extend a parole revocation term.

- The CDCR, DJJ, BPH, and JPB will provide all juvenile parolees with a clearer, prompt appeal system, with appeals to be decided within 10 business days after the Juvenile Parole Board receives the appeal . Parolees will have the right to assistance of an attorney in preparing their appeals.
- The CDCR, DJJ, BPH, and JPB will identify and track juvenile parolees with disabilities and other effective communication needs.
- A juvenile parolee with a disability or communication need may request accommodation and will be provided extra time with an attorney to prepare for hearings.
- The CDCR, DJJ, BPH, and JPB will provide forms in formats to accommodate juvenile parolees with a disability or communication need.
- The CDCR, DJJ, BPH, and JPB will provide reasonable accommodations, such as interpreters, hearing devices, computer readers and magnifying devices, during the parole revocation process for juvenile parolees with a disability or communication need.
- The CDCR, DJJ, BPH, and JPB will provide a grievance process to promptly address complaints of denials of accommodations for a disability or communication need.
- The CDCR, DJJ, BPH, and JPB will no longer have a blanket policy of mechanically restraining all juvenile parolees during parole revocation proceedings, and new policies governing the appropriate use of such restraints will be implemented.
- The federal court will keep jurisdiction to enforce these requirements.

The settlement does not affect juvenile parolees' ability to sue the CDCR, DJJ, BPH, and JPB for money damages regarding parole revocation, or to petition for a writ of habeas corpus. However, in any such case, CDCR, DJJ, BPH, and JPB

officials may argue that the lawsuit should be dismissed because of the *L.H.* settlement.

The *L.H. v. Schwarzenegger* settlement is set forth in a “Stipulated Order for Permanent Injunctive Relief.” You can read this document at the prison or juvenile facility law library, jail library, or parole office.

For more information regarding this settlement, you may contact the juvenile parolees’ lawyers at the following address and phone number:

Rosen, Bien & Galvan, LLP
P.O. Box 390
San Francisco, California 94104
(415) 433-6830 (collect calls accepted)

Youth Law Center
200 Pine Street, 3rd Floor
San Francisco, CA 94104

Bingham McCutchen
3 Embarcadero Center
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Large print and audio tape versions of this document are available in the prison or juvenile facility law library, jail library, and parole offices.